

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL ELLENBURG,

Plaintiff,

vs.

MIKE MAHONEY, FIRST
JUDICIAL DISTRICT COURT, and
MONTANA SUPREME COURT,

Defendants.

Cause No. CV-12-00084-H-DLC-RKS

FINDINGS AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS

Michael Ellenburg has lodged a Complaint and a Motion to Proceed in
Forma Pauperis. C.D. 1. 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Mr. Ellenburg has been issued strikes pursuant to 28 U.S.C. § 1915(g) for failure to state a claim in the following three cases: Civil Action Nos. 06-CV-00059-M-DWM (§ 1983 filed April 6, 2006; closed November 14, 2006); 07-CV-00074-H-DWM (§ 1983 action filed December 3, 2007, closed May 7, 2008); and

09-CV-00038-M-DWM-JCL (§ 1983 filed March 17, 2009; closed April 10, 2009). Mr. Ellenburg may not proceed in forma pauperis unless he is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

Even when construed liberally in Mr. Ellenburg's favor, the allegations in his Complaint do not support a finding that he is in “imminent danger of serious physical injury.” The Motion to Proceed in Forma Pauperis should be denied.

While ordinarily litigants are given a period of time to pay the full filing fee of \$350.00, Mr. Ellenburg should not be allowed to do so in this case. Mr. Ellenburg has filed at least two prior actions in which his motions to proceed in forma pauperis have been denied based upon the three strikes rule. See Civil Action Nos. 09-CV-00049-H-DWM-RKS and 09-CV-00106-M-DWM-JCL. Mr. Ellenburg has been told that he could not submit additional complaints without payment of the filing fee or demonstrating imminent danger of serious physical harm.

Mr. Ellenburg is not entitled to a ten-day period to object. See Minetti v. Port of Seattle, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). No motion for reconsideration will be entertained.

IT IS RECOMMENDED:

Mr. Ellenburg's Motion to Proceed in Forma Pauperis (C.D. 1) should be

denied pursuant to 28 U.S.C. § 1915(g). The Clerk of Court should be directed to close the case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 11th day of September, 2012.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge